IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 304 of 2003
with
CIVIL APPLICATION NO. 6398 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALIDAS MATHURJI THAKOR

Versus

MANUBHAI MAGANBHAI SANGHAVI

Appearance:
1. Appeal from Order No. 304 of 2003
MS TRUSHA K PATEL for Petitioner No. 1-2
MR RUTVIJ M BHATT for the Respondents

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 02/12/2003

ORAL JUDGEMENT

1. Appeal is admitted. Learned advocate, Mr. R.M.

Bhatt, waives service of notice of admission on behalf of the respondents.

2. The appellants, who are the original defendants in Regular Civil Suit No.15 of 1996, pending before the learned Civil Judge (S.D.), Ahmedabad (Rural), are aggrieved by an order passed by the learned 3rd Joint Civil Judge (S.D.), Ahmedabad (Rural), on 4th February, 2003, below Ex.61 in Special Civil Suit No.235 of 2002, directing maintenance of status quo in respect of the suit property, during the pendency of the suit.

3. The contentions raised by the learned advocate for the appellant is that the Trial Court had, earlier, while deciding application Ex.5 for temporary injunction during the pendency of the suit, considered all relevant aspects and rejected the prayer for grant of interim relief. That order was challenged before the District Court by way of Civil Misc. Appeal No.106 of 1997, which came to be withdrawn and, whereafter, that order was not challenged. She submitted that all the relevant aspects were considered by the Trial Court, at that point of time. It also appears that the plaintiff, subsequently, sought amendment in the plaint, which was rejected by the Trial Court and, therefore, revision application came to be preferred before this Court and amendment was allowed whereby prayer for specific performance was added. Subsequently, the plaintiff preferred application Ex.61, seeking same relief and the Trial Court has, although observed several findings against the plaintiff, ordered maintenance of status quo during the pendency of the suit and, therefore, the appeal.

3.1 Learned advocate for the appellant took this Court through the impugned order and drew attention of this Court to specific observations made by the Trial Court against the plaintiff. She submitted that despite these observations, the impugned order is passed. However, the principal contention is that the impugned order could not have been passed in view of the fact that, on same questions, earlier, application Ex.5 with same relief came to be rejected. In that application, although prayer for specific performance was not made in the suit, that question was considered by the Trial Court. The application was rejected not only on ground of specific performance, but on other grounds as well, which are accepted by the Court below while passing order below Ex.61 and, therefore, this order may be vacated by allowing the appeal.

4. Learned advocate, Mr. Bhatt, appearing for the

respondents-original plaintiffs submitted that this Court, while disposing of Civil Revision Application No.922 of 1997, by order dated 26th November, 1999, observed that the status quo as to possession of the disputed property, which prevailed on that day, would continue to operate until amendment is carried out and consequential orders are obtained from the Trial Court. According to Mr. Bhatt, therefore, it was open for the appellant to move for interim orders and the Trial Court was justified in granting the order. He submitted that, if the order of the Court below is set aside, it would amount to nullifying the order of this Court in the Civil Revision Application. He, therefore, urged that the appeal may not be entertained.

5. Having regard to the rival side contentions and considering the orders passed by the Civil Court below Ex.5 as well as the impugned order below Ex.61, it is clear that, while deciding application Ex.5 for temporary injunction, the Civil Court had considered various factors against the plaintiffs-respondents and rejected the prayer for temporary injunction. It is not the case that those grounds are abrogated. The only change that has come into existence is the amendment in the plaint in the form of a prayer for specific relief. The meaning that can be attributed to the order in Civil Revision Appliation by this Court that the status quo shall continue to operate until amendment is carried out and consequential orders are obtained from the Trial Court, is that consequential orders in light of the amendment permitted to be made in the plaint. No rights can be said to have been inferred to the plaintiff to have the decided points redecided. The issues which had attained finality cannot be meant to be reopened by such observation. It was, therefore, not open for the Trial Court to have made observations in this regard and mere addition of prayer of specific performance by itself could not have been a ground for grant of status quo when the Court, in the impugned order itself, observed that the possession of the property with the defendant-appellant and the plaintiffs have not approached the Court with clean hands. It is also required to be noted that the Trial Court also observed that there was no delay on the part of the defendants-appellants, which aspect has been suppressed by the plaintiffs. There are two fold contradictory observations of the Trial Court on the aspect of limitation. It is also required to be noted that the Trial Court observed that the plaintiffs were not party to the Banakhat, Mark 3/1. This being the position, this Court is of a considered view that the Trial Court could

not have upset the observations and findings given by the Trial Court itself while deciding application, Ex.5, on the basis of amendment in the plaint, other factors having remained unchanged and the order below Ex.5 having attained finality. The order, therefore, cannot be permitted to stand.

6. The appeal deserves to be allowed and the same is allowed. The impugned order passed by the learned 3rd Joint Civil Judge (S.D.), Ahmedabad (Rural), below Ex.61 in Special Civil Suit No.235 of 2001 dated 4th February, 2003, is hereby set aside. No costs.

7. In view of the disposal of the appeal, Civil Application No.6398 of 2003 would not survive. It shall stand disposed of accordingly. Notice is discharged. Order to maintain status quo granted by this Court on 9.9.2003 shall stand vacated.

8. However, before parting, there is a request by learned advocate, Mr. Bhatt, for expediting the trial. It would be open for the respondents to apply to the Trial Court for expediting the trial. Ms. Patel states that the appellant shall co-operative in expediting the trial of the suit.

[A. L. DAVE, J.]
gt

9. Before the order could be signed, learned, advocate, Mr. S.M. Shah, appearing for Mr. Bhatt for the respondent, requests that the operation of this order may be suspended for a period of six weeks to enable the respondent to approach the higher forum. He states that status-quo as to title and possession was operative till order was dictated by this Court.

10. Ms. Patel strongly objects. Her contention is that earlier when the status-quo was inoperative, property has already been transferred with the notice of the other side. Her second contention is that the party is already informed about the order dictated by this Court and the papers are returned to her client, and her third contention is that since the order is dictated, this Court is functus officio.

11. Having regard to the contentions raised before this Court and in the facts and circumstances of the case, in order that none of the parties is adversely affected, following order is passed :-

Operation of the above order is suspended for a period of five weeks with a direction to the parties to maintain status-quo, as on today, in respect of the property in question as regards title and possession. The learned advocates to inform the parties.

09.12.2003 [A. L. DAVE, J.]